Supreme Court, U.S.
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No. 90-1356

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

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ORVILLE PATTERSON, JR.,
Petitioner

V.

STATE OF MAINE,
Respondent

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

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# BRIEF IN OPPOSITION

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## OPINION BELOW

The citation to the opinion of the Supreme Judicial Court of Maine in State of Maine v. Orville Patterson, Jr. is State v. Patterson, 582 A.2d 1204 (Me. 1990). The Order of the Maine Superior Court, dated January 22, 1990, denying Petitioner's motion to suppress or dismiss, is unreported. Both opinions are reproduced in appendices to Petitioner's petition.

## STATEMENT OF THE CASE

Petitioner was convicted in this case of operating a motor vehicle at a time when his driver's license had been revoked because he had been found to be an habitual

offender under Maine's motor vehicle statutes. See 29 M.R.S.A. §§ 2292, 2298.

Respondent adopts the statement of facts contained in the decision of the Maine Supreme Judicial Court, State v. Patterson, 582 A.2d 1204, 1206 (Me. 1990).

## REASONS WHY THE PETITION SHOULD BE DENIED

The petition should be denied because this is a poor case to address the Question Presented. First, although the petition asks the Supreme Court to strike down the roadblock involved here, the validity of the stop of Petitioner's pickup truck can be resolved without deciding whether the roadblock itself was legal. Second, notwithstanding the assertions of Petitioner, the decision of the Maine Supreme Judicial Court is not in conflict

with the decisions of this Court and was decided correctly.

## I. THE QUESTION PRESENTED IS A MOOT ISSUE ON THE FACTS OF THIS CASE.

Petitioner frames the Question Presented in terms of whether the roadblock complied with the fourth amendment. However, the roadblock did not stop Petitioner. Petitioner was stopped because the officer had articulable and reasonable suspicion that Petitioner had been driving without a license or while intoxicated. Hence, any question about the validity of the roadblock is moot.

This position is supported by the facts. Petitioner was still 100 yards away from the roadblock when he switched places with his passenger. This act revealed Petitioner's consciousness of guilt that gave the officer articulable and reasonable

suspicion to stop Petitioner's truck. Indeed, by waiving "several vehicles through the roadblock" specifically to stop Petitioner's truck (Petition at 5), the officer abandoned the roadblock prior to stopping Petitioner. Moreover, the officer's request for Petitioner to show his license was not part of the roadblock procedure but was prompted by the officer's suspicion that Petitioner was driving either without a valid license or while intoxicated.

Hence, the real issue in this case is not whether the roadblock complied with the fourth amendment but whether the stop of Petitioner's pickup truck complied with the fourth amendment. This stop was valid because, as the Maine Supreme Judicial Court recognized (State v. Patterson, 582

A.2d 1204, 1206 (Me. 1990)), it was based on "a reasonable, articulable suspicion of criminal conduct," i.e., that Petitioner "was either intoxicated or under suspension [of his driver's license]." The stop thus conformed with the holding of Delaware v. Prouse, 440 U.S. 648, 663 (1979), that an automobile may be stopped where there is "articulable and reasonable suspicion that a motorist is unlicensed... or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." (Emphasis added).

Since the roadblock was not the basis of the stop, this Court need not address its validity.

Nor is the stop somehow the "fruit of the poisonous tree" of the roadblock. For, upon seeing the roadblock, Petitioner had

several options, one of which was to merely turn around and drive away and thus avoid the roadblock altogether. Another option would have been to simply continue driving and submit to the roadblock, where Petitioner's driver's license would not have been checked. The fact that Petitioner instead switched places with his passenger within sight of the officer, thus giving rise to the officer's articulable and reasonable suspicion, was an independent act at a time when Petitioner had not yet been seized.

This independent choice is no more the "fruit" of the roadblock than was the abandonment of whiskey containers in Hester v. United States, 265 U.S. 57 (1924), the fruit of the agent's hot pursuit in that case. Yet, the Hester Court held that the

abandonment was not a product of the hot pursuit because no seizure of the defendant or his containers had yet occurred. Moreover, "[t]he defendant's own acts, and those of his associates, disclosed the jug, the jar, and the bottle...." Hester, 265 U.S. at 58, quoted in California v. Hodari D., No. 89-1632, slip op. at 7 (U.S. Apr. 23, 1991) and Brower v. County of Inyo, 109 S.Ct. 1378, 1381-82 (1989).

Likewise, in this case, the stop is not a product of the roadblock because Petitioner's intervening act in switching places with his passenger occurred well before the roadblock, before any seizure

had taken place.[1/] Furthermore, as in Hester, it was Petitioner's own act that disclosed his guilt and thus provided the officer with articulable and reasonable suspicion to stop the truck and ask for Petitioner's driver's license.

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[1/]Under California v. Hodari D., No. 89-1632 (U.S. Apr. 23, 1991), and Michigan v. Chesternut, 108 S.Ct. 1975 (1988), a seizure does not occur when a person takes evasive action because of the presence of the police. A seizure occurs only at the point when the police actually stop an individual either by the application of physical force, however slight, or by the individual's submission to the officer's show of authority. Hodari D., No. 89-1632. In this case, the seizure did not occur until after Petitioner's actions had given rise to an articulable and reasonable suspicion to stop him. Hence, the stop is not the fruit of a pre-existing seizure. See Hodari D., No. 89-1632, slip op. at 7 (abandoned cocaine and ensuing arrest were not the fruit of a seizure, where police pursuit did not constitute seizure).

Even though the roadblock may have been in a broad sense the cause of Petitioner's switching places, Petitioner was in fact stopped on the basis of the officer's resulting suspicion, not by the roadblock. And even though Petitioner would have been stopped at the roadblock anyway, the means that terminated the Petitioner's freedom of movement was not the roadblock but the stop based on the officer's suspicion.

This analysis is supported by Brower v. County of Inyo, 109 S.Ct. at 1381, where this Court stated that a

> Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement..., nor even whenever there is a governmentally caused and governmentally desired termination of an individual's freedom of movement..., but only

> when there is a
> governmental termination
> of freedom of movement
> through means
> intentionally applied.

(Emphasis in original). Here, after observing Petitioner and waiving several vehicles through the roadblock, the officer intended to and did stop Petitioner on the basis of the officer's articulable and reasonable suspicion. There was no seizure of Petitioner - i.e., no application of physical force by the officer and no submission by Petitioner to the officer (Hodari D., No. 89-1632) - until this stop. Hence, there is no need for the Supreme Court to address the validity of the roadblock in this case.

## II. THERE IS NO CONFLICT BETWEEN THE MAINE COURT'S DECISION AND THE DECISIONS OF THIS COURT.

Even if the validity of the roadblock were not a moot issue, the petition should

still be denied because there is no conflict between the decision of the Maine Supreme Judicial Court and those of this Court. Indeed, the Maine Supreme Judicial Court specifically cited to Delaware v. Prouse, 440 U.S. 648 (1979), Michigan Dept. of State Police v. Sitz, 110 S.Ct. 2481 (1990), and Brown v. Texas, 443 U.S. 47 (1979), and explicitly followed the three-pronged balancing test of Brown in reaching its result.

Although Petitioner makes much of the fact that the officer's roadblock was not conducted according to guidelines established by "politically accountable officials" (Petition at 12, 20), nothing in Sitz requires that roadblocks be supervised or conducted under guidelines approved by politically accountable officials. All

that Sitz states is that "Brown was not meant to transfer from politically accountable officials to the courts the decision as to which among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger." Sitz, 110 S.Ct. at 2487.

Moreover, in applying the three-pronged Brown test,[2/] the Maine Supreme Judicial

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[2/] The three-pronged Brown test

> involves [1] a weighing of the gravity of the public concerns served by the seizure, [2] the degree to which the seizure advances the public interest, and [3] the severity of the interference with individual liberty.

Patterson, 582 A.2d at 1205 (quoting Brown, 443 U.S. at 50-51).

Court correctly concluded that the roadblock here was reasonable under the fourth amendment. First, the public does have an interest in the enforcement of motor vehicle safety laws to prevent traffic accidents. Second, the roadblock here promoted that interest because the officer's goal "was only to make a visual check of vehicles for safety violations." The officer was not even checking driver's licenses and registrations. Patterson, 582 A.2d at 1206.

And third, the roadblock did not constitute a severe interference with individual liberty. The officer conducted his check during the daytime, during the

early part of a Saturday afternoon in September, on a well-lit flat stretch of road with visibility of 100 to 150 yards in each direction. The officer's safety check took only one and a half to two minutes. The officer checked headlights, plate lights, tires, and inspection and registration stickers. The officer did not request licenses and registrations, except in those instances where the vehicle had an expired sticker. If the officer found a vehicle or safety defect, the officer merely warned the driver of the problem and did not issue a citation. If the line grew to seven or eight vehicles, the officer simply waved all of them through. As the Maine Supreme Judicial Court stated, "We cannot think of a less intrusive and more effective method of checking for all of

these violations at the same time." Patterson, 582 A.2d at 1206.

Finally, this case does not involve the "kind of standardless and unconstrained discretion which is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent." Sitz, 110 S.Ct. at 2487 (quoting Prouse, 440 U.S. at 661). The officer here testified that he conducted this exact kind of safety roadblock for the four years he had been with the Maine State Police and that he knew that other state police officers conducted the same type of safety roadblock in other parts of the state. While recognizing that "the historical fact of an established police practice [does not]

always demonstrate its reasonableness," the Maine Supreme Judicial Court could not find that

> the state police policy of allowing individual officers to conduct this sort of minimally intrusive safety check is unreasonable. The known procedure for conducting these checks worked as a limit on Officer Curtis's discretion. In these circumstances the absence of supervisory personnel in the planning of this specific safety check does not render the limited operation [i.e., intrusion] unreasonable.

Patterson, 582 A.2d at 1206.

The crucial point here is that the officer was not exercising unfettered discretion in choosing either the persons to be seized or the extent of the ensuing searches. Instead, the officer was stopping everyone and subjecting all vehicles to a uniform safety check, except when traffic backed up. Given the

reasonableness of the roadblock conducted here, and that the Maine Supreme Judicial Court correctly applied the legal principles set down by this Court in determining the validity of the roadblock, there is no need for the Supreme Court to review this case.

## CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Dated: April 29, 1991

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